

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

January 22, 2018

3:21 p.m.

MEMBERS PRESENT

Representative Sam Kito, Chair
Representative Adam Wool, Vice Chair
Representative Andy Josephson
Representative Louise Stutes
Representative Chris Birch
Representative Gary Knopp

MEMBERS ABSENT

Representative Colleen Sullivan-Leonard
Representative Mike Chenault (alternate)
Representative Bryce Edgmon (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 273

"An Act extending the termination date of the Marijuana Control Board; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 274

"An Act extending the termination date of the Board of Psychologist and Psychological Associate Examiners; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 275

"An Act extending the termination date of the Board of Massage Therapists; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 180

"An Act relating to money transmission and currency exchange businesses; relating to transmitting value that substitutes for money; relating to licensing requirements and registration through the Nationwide Multistate Licensing System and Registry; relating to surety bonding requirements; authorizing certain

licensees to contract to use subdelegates for reloading funds on certain stored-value cards; relating to record retention, reporting requirements, and enforcement provisions; relating to exemptions; relating to money services Internet activities; relating to transmitting value and currency; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 273

SHORT TITLE: EXTEND: MARIJUANA CONTROL BOARD

SPONSOR(s): REPRESENTATIVE(s) KITO

01/12/18	(H)	PREFILE RELEASED 1/12/18
01/16/18	(H)	READ THE FIRST TIME - REFERRALS
01/16/18	(H)	L&C, FIN
01/22/18	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 274

SHORT TITLE: EXTEND: BD OF PSYCHOLOGISTS/PSYCH ASSOC.

SPONSOR(s): REPRESENTATIVE(s) KITO

01/12/18	(H)	PREFILE RELEASED 1/12/18
01/16/18	(H)	READ THE FIRST TIME - REFERRALS
01/16/18	(H)	L&C, FIN
01/22/18	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 275

SHORT TITLE: EXTEND: BOARD OF MASSAGE THERAPISTS

SPONSOR(s): REPRESENTATIVE(s) KITO

01/12/18	(H)	PREFILE RELEASED 1/12/18
01/16/18	(H)	READ THE FIRST TIME - REFERRALS
01/16/18	(H)	L&C, FIN
01/22/18	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

CRYSTAL KOENEMAN, Staff
Representative Sam Kito
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 273 and HB 275 on behalf of the bill sponsor, Representative Kito.

KRISTIN CURTIS
Legislative Auditor
Legislative Audit Division
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided information on the audit requests.

ERIKA MCCONNELL, Director
Alcohol and Marijuana Control Office (AMCO)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during discussion of the sunset review.

BRANDON EMMETT, Industry Seat Board Member
Marijuana Control Board
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 273.

JANA WELTZIN, Owner
JDW Counsel, LLC
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 273.

LEAH LEVINTON
Enlighten Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 273.

BRUCE SCHULTE
Campaign to Regulate Marijuana
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 273.

CAITLYN ELLIS, Staff
Representative Sam Kito
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 274 on behalf of the bill sponsor, Representative Kito.

ALLEN LEVY, Chair
Board of Psychologists and Psychological Associate Examiners
Anchorage, Alaska

POSITION STATEMENT: Testified during discussion of HB 274.

ROBERT LANE, PhD
Federal/State Advocacy Coordinator

Alaska Psychological Association
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 274

SARA CHAMBERS, Deputy Director
Juneau Office

Division of Corporations, Business, and Professional Licensing
Department of Commerce, Community & Economic Development
Juneau, Alaska

POSITION STATEMENT: Testified during discussion of HB 275.

DAVID EDWARDS-SMITH, Chair
Board of Massage Therapists
Soldotna, Alaska

POSITION STATEMENT: Testified during discussion of HB 275.

VOLKER HRUBY, President
American Massage Therapy Association (AMTA) - Alaska Chapter
Girdwood, Alaska

POSITION STATEMENT: Testified during discussion of HB 275.

KIM VERREYDT
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 275.

JANE GNASS
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 275.

JILL MOTZ
Wasilla, Alaska

POSITION STATEMENT: Testified in support of HB 275.

Yael HICKOK
Chugiak, Alaska

POSITION STATEMENT: Testified in opposition to HB 275.

ACTION NARRATIVE

[3:21:13 PM](#)

CHAIR SAM KITO called the House Labor and Commerce Standing Committee meeting to order at 3:21 p.m. Representatives Kito, Josephson, Knopp, Birch, and Wool were present at the call to order. Representative Stutes arrived as the meeting was in progress.

HB 273-EXTEND: MARIJUANA CONTROL BOARD

[3:22:40 PM](#)

CHAIR KITO announced that the first order of business would be HOUSE BILL NO. 273, "An Act extending the termination date of the Marijuana Control Board; and providing for an effective date."

[3:22:51 PM](#)

CRYSTAL KOENEMAN, Staff, Representative Sam Kito, Alaska State Legislature, paraphrased from the Sponsor Statement [Included in members' packets], which read:

House Bill 273 extends the termination date for the Marijuana Control Board until June 30, 2024.

Per statute, this board is scheduled to sunset on June 30, 2018 with a one-year wind down if the legislature does not pass legislation extending it. The licensing function will remain after this date; however, the administrative functions of the board would transfer to the department.

Legislative Audit reviewed the board's operations and determined that it is in the best interest of the state to extend this board. The audit makes four recommendations and recommends a six-year extension with a new termination date of June 30, 2024. This is shy of the full eight-year extension that Legislative Audit is authorized to provide.

The recommendations are as follows:

1. The board members, Alcohol and Marijuana Control Office (AMCO) director, and enforcement supervisor should work together to formally establish an enforcement plan to direct limited enforcement resources.
2. The board and the AMCO director should implement a process to monitor and track complaints to ensure they are assessed for follow up action and investigated in a timely manner.
3. The AMCO director should develop written procedures for establishing the expiration dates of marijuana handler permits and ensure staff receive the appropriate training.

4. The AMCO director should develop and implement procedures to segregate the duties for calculating and remitting fees to local governments.

The Marijuana Control Board is a regulatory and quasi-judicial board consisting of five members appointed by the governor, created for controlling the cultivation, manufacture, and sale of marijuana in the state. The board consists of one member from the public safety sector, one from the public health sector, one residing in a rural area, one actively engaged in the marijuana industry, and one who is either from the general public or actively engaged in the marijuana industry.

The continuation of the Marijuana Control Board is important to the health and safety of Alaskans.

[3:24:14 PM](#)

REPRESENTATIVE BIRCH asked how the duties and responsibilities of the board in terms of state law interacted with federal law.

CHAIR KITO offered his understanding that previously the administration implemented a memo which stated that the federal priorities were "not on enforcing the drug situation locally except in the cases of significant crimes." He noted that, as the memo had since been withdrawn, it would be best to hear about implementation of state statute on the role between the state and federal government.

REPRESENTATIVE BIRCH related that he had served on various boards and there was always a concern for board liability. He expressed his concern for the protection of board members.

CHAIR KITO offered his belief that this could be brought up later.

REPRESENTATIVE KNOPP offered his belief that the former chair of the Alcohol and Beverage Control Board was a police chief, and when the memo was revoked, the chief had felt it was his duty to step aside.

[3:28:17 PM](#)

KRISTIN CURTIS, Legislative Auditor, Legislative Audit Division, Alaska State Legislature, directed attention to the Sunset

Review [included in members' packets] and stated that the purpose of the sunset review was to determine whether the Marijuana Control Board was serving the public interest and whether it should be extended. She explained that this was a new board created as a result of the 2014 ballot measure, that there was background information on page three, and report conclusions on page five of the review. She paraphrased from the Report Conclusions in the review, which read, in part:

Overall, the audit concludes the board is serving the public's interest by effectively licensing marijuana establishments and developing and adopting regulations necessary to implement statutes that allow for the cultivation, manufacture, and sale of marijuana in Alaska. The audit makes four recommendations for operational improvements.

The board met its statutory mandate to adopt regulations necessary for implementing statutes. Significant regulations (3 AAC 306) specify requirements for the issuance, renewal, suspension, and revocation of registrations to operate marijuana establishments; qualifications for registration; and a schedule of application, registration, and renewal fees. The board operated in the public interest and did not duplicate the efforts of other entities, registration, and renewal fees. The board also amended regulations to clarify submissions to the board and conduct of board meetings. Regulatory additions and changes during the audit period were public noticed according to the Administrative Procedures Act.

To help evaluate board effectiveness, surveys were conducted as part of the audit. A survey was sent to 101 licensees and 71 (70 percent) responded. A second survey was sent to 16 local governments that had a license issued in their jurisdiction and 14 (88 percent) responded. Licensee and local government survey questions and responses are presented as Appendices B and C of this report.

One hundred percent of local government survey respondents and 75 percent of licensee survey respondents rated the board's overall effectiveness in serving the public interest as effective or very effective. Eighty-six percent of local government

survey respondents believe the board does not duplicate efforts.

3:30:15 PM

MS. CURTIS directed attention to page 8 of the review and reported that the [Marijuana Control] Board had issued 122 licenses from July 2016 through April 2017, with 80 percent of the licensee survey respondents rating the overall license experience as good or excellent. She further paraphrased from page 8, which read:

Additionally, as included in AMCO's FY 17 operating budget,³ it is the intent of the legislature that application and licensing fees cover the cost of regulation and recover unrestricted general fund appropriations made while the program was being established. AMCO staff has implemented a process for tracking both revenues and expenditures, but reported it is too early in the development of the board to determine whether the current fees are set at sufficient levels to cover the cost of regulating the marijuana industry. AMCO management expects to be fully funded by application and licensing fees by FY 20. Exhibit 3 presents a schedule of fees established by the board.

MS. CURTIS directed attention to page 11 of the review, which listed the first of four recommendations made by the audit, titled, "The board members, the Alcohol and Marijuana Control Office (AMCO or control office) director, and enforcement supervisor should work together to formally establish an enforcement plan to direct limited enforcement resources," which read:

The audit identified the enforcement section is operating without a formally established enforcement plan. Neither the Marijuana Control Board (board) nor AMCO director had considered the need for or importance of establishing enforcement goals or plans to ensure the effective allocation of enforcement resources. Per AS 17.38.121, the board is vested with the powers necessary to enforce laws related to marijuana and may employ enforcement agents and staff it considers necessary to carry out its duties. The board has tasked the enforcement section with the responsibility of detecting violations and enforcing

marijuana laws. By not formally establishing an enforcement plan, the enforcement section has no guidance for prioritizing its limited resources and runs the risk of not adequately protecting the public. We recommend the board members, the AMCO director, and enforcement supervisor work together to formally establish an enforcement plan to direct AMCO's limited enforcement resources.

MS. CURTIS paraphrased from the second recommendation, titled "The board and the AMCO director should implement a process to monitor and track complaints to ensure they are assessed for follow up action and investigated in a timely manner," beginning on page 11, which read:

The board and AMCO management have not maintained a process to monitor and track all actions taken on complaints to ensure they are resolved in a timely manner. The board does have a process to receive complaints from licensees, law enforcement agencies, and the general public through their website, telephone, or emails; however, complaints are only tracked if they result in an inspection or investigation. Furthermore, the basis for a decision not to investigate is not documented and maintained.

According to AMCO staff, a process to log all complaints received previously existed for the Alcoholic Beverage Control Board; however, when the Marijuana Control Board was created, staff responsibilities were realigned, and the maintenance of the complaint log took a lower priority compared to new responsibilities associated with marijuana regulation.

The efficiency with which complaints are investigated is one of the sunset evaluation criteria used in the legislative oversight process. Alaska Statute 44.66.050(c)(6) specifies the sunset review must evaluate:

The efficiency with which public inquiries or complaints regarding the activities of the board or commission fi led with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the

office of the ombudsman have been processed and resolved.

By not tracking complaints, there is an increased risk that board staff may not investigate complaints and/or not investigate complaints in a timely manner. Such instances could reduce the board's ability to effectively enforce marijuana laws. Additionally, complaints received directly by board staff via telephone or email may never be resolved in the event of staff turnover.

We recommend the board and the AMCO director implement a process to monitor and track complaints received to ensure they are assessed for follow up action and investigated in a timely manner.

[3:32:57 PM](#)

MS. CURTIS paraphrased from the third recommendation, titled "The AMCO director should develop written procedures for establishing the expiration dates of marijuana handler permits and ensure staff receive the appropriate training," beginning on page 12, which read:

Forty-seven of 53 marijuana handler permits tested were issued by AMCO with incorrect expiration dates. Of these, 45 were issued for a longer period than allowed by regulation. Regulation at 3 AAC 306.700(c) states that:

To obtain a marijuana handler permit, a person who has completed the marijuana handler permit education course described under (b) of this section shall present the course completion certificate to the director. The director shall issue a marijuana handler permit card valid for three years from the date of issue.

Management interprets the three-year validity period to start on the date of the course completion. In most instances, expiration dates of the handler permits were established at three years from the date the individual applied for the permit. The lack of written procedures and sufficient training contributed to AMCO staff's varying interpretations for calculating permit expiration dates.

By not issuing permits in accordance with regulation, AMCO is allowing permit holders to handle marijuana and marijuana products beyond the period set in regulation without obtaining updated training on marijuana laws.

We recommend the AMCO director develop written procedures for establishing the expiration dates of marijuana handler permits and ensure staff receive the appropriate training.

3:33:20 PM

MS. CURTIS paraphrased from the fourth recommendation, titled "The AMCO director should develop and implement procedures to segregate the duties for calculating and remitting fees to local governments," beginning on page 13 of the review, which read:

AMCO management does not adequately segregate duties over remittances of application fees to local governments. The audit found one AMCO employee is responsible for calculating and approving the amounts to be remitted to local governments, and no separate review is performed.

Upon receipt of a new or renewal application, AS 17.38.200(c) requires the board to immediately forward a copy of each application and half of the registration application fee to the local regulatory authority for the local government in which the applicant desires to operate. Management is responsible for establishing internal controls to ensure fees remitted are accurate and complete. Segregation of duties is a key internal control for appropriately receiving and distributing funds.

AMCO management did not consider the need for segregating the duties for remitting fees to local governments. The lack of adequate segregation of duties increases the risks of error or fraud.

We recommend the AMCO director develop and implement procedures to adequately segregate the duties for calculating and remitting fees to local governments.

MS. CURTIS shared that the response from Department of Commerce, Community & Economic Development was on page 33 and the response from the Marijuana Control Board was on page 35. She added that both expressed agreement to all four of the recommendations.

3:34:20 PM

CHAIR KITO offered his belief that there had not been withdrawal of the aforementioned memo during the completion of the sunset review. He asked if that decision by the federal government would have any impact on the efficacy or the applicability of the Alaska Marijuana Control Board.

MS. CURTIS replied that it was outside the scope of the review, and it had not been considered during the audit.

3:35:24 PM

ERIKA MCCONNELL, Director, Alcohol and Marijuana Control Office (AMCO), in response to Representative Birch, said that there was a work project to develop regulations regarding on-site consumption. This proposal had received more than 500 pages of comment when it had been opened for public comment and that several issues had been identified which needed work through the regulations. These issues had been forwarded to a sub-committee for work with a new proposal due at the April meeting.

REPRESENTATIVE JOSEPHSON referenced a break-in in Anchorage resulting in the loss of more than \$100,000 in assets in less than 65 seconds. He asked if it was necessary to show the floorplan of the business on-line.

MS. MCCONNELL expressed concern for the security of the licensees. She explained that the application forms had been revised to no longer request that the applicant show any security apparatus. She added that the AMCO was also trying to find the balance between public access to information for the board and the security concerns of the licensees. She acknowledged that the licensed premise diagram would still be required for review, but it would be removed from the website once the facility began operation.

REPRESENTATIVE JOSEPHSON noted that the Alaska State Legislature had introduced many bills after the marijuana initiative had been passed, although very few were passed. He asked if this hands-off approach by the Legislature was working, or if there was a need for "greater guidance."

MS. MCCONNELL shared her belief that the Marijuana Control Board had been very responsive throughout the regulatory process, to address issues that had been found in reviews by the AMCO. She deferred to the board members for their comments.

REPRESENTATIVE WOOL asked about the investigations for complaints.

MS. MCCONNELL replied that, in general, AMCO only investigated submitted complaints and was not looking for problems.

REPRESENTATIVE WOOL asked if there were "stings" or operations to intentionally get people to break the rules.

MS. MCCONNELL relayed that, with alcohol, there was the compliance check and the shoulder tap program. She noted that AMCO was working to resurrect those programs and would also apply them for marijuana. She explained that the compliance check was an attempt by underaged people to purchase the regulated product, and the shoulder tap was an underaged person waiting outside the facility and asking people to purchase for them. She offered her belief that these were important ways to enforce the laws for regulated substances.

REPRESENTATIVE WOOL asked if there was enough staff to enforce both marijuana and alcohol.

MS. MCCONNELL offered her belief that it made sense to have these two substances regulated through the same office, even as the staff was extremely busy. She relayed that although they could use more people, she was not going to ask for more staff and that the office was managing.

REPRESENTATIVE WOOL referenced an infraction for inaccurate labeling by a Fairbanks business, in which the business was fined \$500,000. He asked if there was a schedule of fines, or if this was an arbitrary amount, as it appeared to be a very high fine for a new business.

MS. MCCONNELL explained that the situation went far beyond a labelling issue, that this was a product manufacturing facility that was not testing the vast majority of its product, a major health and safety issue. She shared that it was the result of a tip that the business was not testing or tracking the product as required. She explained that she then wrote an accusation with a recommendation for the license to be revoked and submitted it

to the Board for consideration. She reported that the Board decided that a fine was important, and although there was not a table of fines, there was a proposal for certain amounts for each subsequent violation or three times the profit of the licensee. She noted that, as the business had a profit of more than \$1 million, the board decided that a high fine was warranted.

[3:46:14 PM](#)

CHAIR KITO referenced the fiscal note [Include in members' packets] which identified \$532,000 from general funds and asked about the necessity for this funding.

MS. MCCONNELL offered her understanding that when the program was created there was a requirement that it be funded by the fees. In FY16 and FY17, the office was funded by unrestricted General Funds, with the understanding that there would be subsequently less in the ensuing years and for it to be entirely self-supported by FY2020. She explained that for FY19, the general fund allocation request was for half of the FY18 amount. She pointed out that the industry was still determining the number of licenses to determine the income necessary to support the needs of this regulated industry.

CHAIR KITO mused that this was in recognition for the transition from start up to regular operations.

MS. MCCONNELL expressed her agreement.

REPRESENTATIVE BIRCH offered his understanding that "there's a lot of cash moving around." He asked if the annual license fees were paid with "a fistful of cash."

MS. MCCONNELL relayed that most people paid with checks or cashier's checks, and that they did not receive very much cash.

REPRESENTATIVE KNOPP asked how the shoulder tap program worked and who was held accountable under the program.

MS. MCCONNELL explained that every store must have a security person at the front entrance to make sure that no one under 21 [years of age] entered. She said that the shoulder tap program was a bit challenging because someone had to notice that after the purchaser went outside, they gave it to someone who appeared to be underage. She said that they tried to address each situation on a case by case basis for accountability.

REPRESENTATIVE JOSEPHSON shared his observation that in Anchorage there were "dozens of retail operations." He asked about the determination for the number of licensees. He questioned whether there was enough demand for them to all be profitable.

MS. MCCONNELL replied that there was not a limit to the number of state licenses; however, the local governments were able to set a limit, even though the Municipality of Anchorage had not done so.

[3:52:21 PM](#)

BRANDON EMMETT, Industry Seat Board Member, Marijuana Control Board, stated his support for the proposed bill and offered his belief that the Marijuana Control Board had done "quite a lot of great work for the State of Alaska" and that he would like to see that work continued. He opined that a functional regulated marijuana industry was more in line with the needs of the state than the previously unregulated system.

REPRESENTATIVE JOSEPHSON asked if the board was seeking any guidance from the legislature or would they prefer a hands-off approach.

MR. EMMETT replied that the board currently "does not have any specific asks of the legislature." He acknowledged that there were some issues that he believed could be addressed by the legislature.

REPRESENTATIVE WOOL drew attention to page 23 of the sunset audit [APPENDIX B] depicting survey data for the overall licensing experience, the overall renewal experience, and the overall board effectiveness. He pointed out that the percentage of responses for poor, creates an unnecessary barrier, or not at all effective was at least 20 percent and asked if any of these applicant responses concerned him as a board member.

MR. EMMETT offered his understanding that many of the complaints had been made at the beginning of the process, as there had been significant barriers at entry, mainly financial barriers which made it "a pay-to-play system." He opined that although some applicants found it difficult to enter the industry, as it matured the number of complaints would diminish. He suggested that the process was relatively smooth in comparison to that of other states.

REPRESENTATIVE WOOL asked if the merger of the alcohol and marijuana boards had been effective or divergent.

MR. EMMETT stated that there were some subtle differences between the alcohol and the marijuana industries and that the greatest challenge was for total resources. He opined that the staff has "been stretched to the limit," working very hard with very limited resources. He acknowledged that, although the State of Alaska was in trying economic times, an expansion of resources would be applicable.

[3:59:28 PM](#)

CHAIR KITO opened public testimony on HB 273.

[3:59:57 PM](#)

JANA WELTZIN, Owner, JDW Counsel, LLC, stated that her law firm serviced about 40 percent of the marijuana licenses in Alaska, as well as marijuana licensee holders in Washington, Oregon, Arizona, and Nevada. She declared her support of the proposed bill, pointing out that the Marijuana Control Board had worked hard to create an evolving structure for the industry, and had built an efficient office.

[4:01:20 PM](#)

LEAH LEVINTON, Enlighten Alaska, stated that she was one of the first marijuana retail license holders in Alaska. She added that the license process was very involved, and that she had learned a lot alongside the Marijuana Control Board. She lauded the hard work of Ms. McConnell and declared support for the Marijuana Control Board in the progress and development of responsible regulation to help keep the industry consistent. She stated support for the proposed bill, noting that the AMCO office could use additional staff.

[4:03:46 PM](#)

BRUCE SCHULTE, Campaign to Regulate Marijuana, shared that he had served on the Marijuana Control Board and he praised the office staff. He referenced an earlier recommendation to establish enforcement priorities, which he declared to be "imperative." He shared that although it was a new process, there had been enforcement of subjective interpretation for what the regulation should be. He stated that this was unfair and a

misapplication of law. He offered hope that the Legislature would not have to become involved in this, unless the AMCO office was not able to arrive at specific limitations on the enforcement staff and protect the due process.

REPRESENTATIVE JOSEPHSON asked for an example.

MR. SCHULTE offered an example of an incident when the Marijuana Control Board had met on a Thursday and Friday, and received input from the staff, although nothing had been said about CBD oil on the shelves of the retail stores. On the following Monday, several stores around the state were raided and the CBD oil was confiscated under an interpretation of regulation. He reported that many of the products were identical to products carried on other retailer shelves. He acknowledged that, although the discussion about CBD oil was valid and appropriate, this could have been handled differently. He opined that it would have been appropriate for the staff to have discussed this at the meeting of the Marijuana Control Board. It was not until several months later that the head of enforcement asked the board for guidance in areas that enforcement was unsure of how to respond. He expressed his concern that, although there was law enforcement authority, they were not bound by the same levels of due process.

REPRESENTATIVE WOOL asked if the dual enforcement responsibilities for the two separate areas was a good thing.

MR. SCHULTE said that, given the economic environment, it made sense to "keep things as lean as possible." He offered his belief that, when affordable, it would be better to maintain separation of the two offices. He acknowledged that there were similarities in the two industries and that the staff was stretched thin.

[4:10:54 PM](#)

CHAIR KITO announced that public testimony would remain open.

CHAIR KITO announced that HB 273 would be held over.

HB 274-EXTEND: BD OF PSYCHOLOGISTS/PSYCH ASSOC.

[4:11:05 PM](#)

CHAIR KITO announced that the next order of business would be HOUSE BILL NO. 274, "An Act extending the termination date of

the Board of Psychologist and Psychological Associate Examiners; and providing for an effective date."

4:11:26 PM

CAITLYN ELLIS, Staff, Representative Sam Kito, Alaska State Legislature, paraphrased the Sponsor Statement [Included in members' packets], which read:

House Bill 274 extends the Board of Psychologist and Psychological Associate Examiners to June 30, 2026 in accordance with the recommendation of Legislative Audit.

The board was established to regulate the practice of psychology in Alaska and is composed of five members: three licensed psychologists, one licensed psychological associate, and one public member who does not have a financial interest in the health care industry. As of March 2017, the board regulated 285 licensees.

The board is responsible for establishing examination and education requirements for licensees and issuing licenses to qualified applications, establishing continuing education requirements for license renewal, establishing standards for the practice of psychology, imposing disciplinary sanctions, reviewing the quality and availability of psychological services in the state when requested by DCCED, and compiling information for submission to DCCED on the practice of psychology by licensees in the state.

The Division of Legislative Audit conducted a review of the board and determined that the board is serving the public's interest by effectively licensing and regulating psychologists and psychological associates. The board monitors licensees and works to ensure only qualified individuals practice in Alaska.

The board is currently scheduled to sunset on June 30, 2018 and will have one year to conclude its administrative operations unless the legislature extends the termination date. House Bill 274 reflects the recommendations of the Division of Legislative Audit, and extends the termination date for the Board till June 30, 2026.

4:13:11 PM

KRISTIN CURTIS, Legislative Auditor, Legislative Audit Division, Alaska State Legislature, directed attention to the sunset review audit, dated October 2017, [Included in member's packets], and paraphrased from the report conclusions, which read:

Overall, the audit concludes the board served the public's interest by effectively licensing and regulating psychologists and psychological associates. The board monitored licensees and worked to ensure only qualified individuals practice in Alaska.

In accordance with AS 08.03.010(c)(18), the board is scheduled to terminate on June 30, 2018. We recommend that the legislature extend the board's termination to June 30, 2026.

MS. CURTIS stated that page 5 of the report detailed the licensing activity and reported that there 285 active licenses as of March 2017, a 174 percent increase since the prior sunset audit in 2009. She moved on to the Schedule of Revenues and Expenditures on page 7 and reported that the Board had a surplus of almost \$400,000 at the end of FY17, noting that the Board, in conjunction with the Division of Corporations, Business, and Professional Licensing (DCBPL), had increased fees for FY17 despite this surplus. She pointed out that the fee levels were shown on page 6.

MS. CURTIS paraphrased the first recommendation, "DCBPL's director, in consultation with the board, should reduce fees," on page 9, which read:

DCBPL management did not adequately set licensing fees equal to the costs of regulating the profession. Alaska Statute 08.01.065 requires the Department of Commerce, Community, and Economic Development annually review fees to determine whether regulatory costs of each occupation approximately equal fees collected. If fees and costs do not equal, fees should be adjusted.

At the end of FY 16, the board had a surplus of \$273,347. Rather than adjusting fees downward to reduce the deficit, DCBPL management, at the request of the board, increased the FY 17 application fee for

psychologists and psychological associates and the FY 17 licensure fees for psychological associates. Per the board chair, fees were changed to ensure associate and psychologist licensees paid the same fee. The application fee was increased to cover the costs of processing incoming applications. When analyzing the fee levels, DCBPL management did not adequately consider the surplus and make necessary adjustments. The oversight resulted in licensees paying higher than justified license fees.

We recommend DCBPL's director, in consultation with the board, reduce fees.

MS. CURTIS paraphrased the second recommendation, "DCBPL's director should develop and implement procedures to ensure courtesy licensees comply with monthly reporting requirements," on page 10, which read:

The audit found four out of 13 courtesy licenses issued during the audit period did not comply with the monthly reporting requirements. According to 12 AAC 60.035(a), a courtesy licensee must submit a monthly report to the board during the period of licensure indicating the number of days practiced during the month. Absent submitting the required reports, there is no way to determine if the licensee was performing services in excess of the 30 days allowed by the license.

Failure to ensure compliance was due in part to high turnover of licensing staff during the audit period and lack of procedures to ensure DCBPL staff were monitoring and reporting noncompliance to the board.

We recommend DCBPL's director develop and implement procedures to ensure courtesy licensees comply with monthly reporting requirements.

MS. CURTIS directed attention to the response from the Department of Commerce, Community & Economic Development (DCEED) on page 21, and the response from the Board of Psychologist and Psychological Associate Examiners on page 23. She stated that both the Board and the DCEED agreed with the recommendations.

[4:15:29 PM](#)

REPRESENTATIVE WOOL asked for clarification on the justification for the fee increase despite the surplus.

MS. CURTIS offered her belief that the intent was to have the licensing fee for the psychologists and psychological associates to be the same level, as it would take the same amount of resources to process both the licenses. She pointed out that instead of reducing one and increasing the other, they only increased the one fee, and did not consider the surplus. She said that this was a simple oversight for not considering the surplus, which resulted in too high a fee.

[4:17:08 PM](#)

ALLEN LEVY, Chair, Board of Psychologists and Psychological Associate Examiners, said that he was currently in his second year of his second term on the board and had been serving since 2012. He expressed agreement with the sunset audit, that the board was acting in the public interest, and doing a good job of regulating the practice of psychology in Alaska, while protecting the public and ensuring an adequate supply of licensed professionals. He said that steps had already been taken to implement the two recommendations from the sunset audit for tracking the courtesy licenses, with an expectation to see a significant fee decrease at the next renewal period for license fees in 2019. He declared support for the continued existence of the board, and opined that the audit was fair, effective, and accurate in its conclusions.

[4:19:24 PM](#)

ROBERT LANE, PhD, Federal/State Advocacy Coordinator, Alaska Psychological Association, shared that he was a professor at Alaska Pacific University and, as a psychologist, worked on the legislative committee for the Alaska Psychological Association. He testified in support of HB 274 as it provided regulations for guiding the practice and provided safety for the public. He added that it provided regulations to help guide the educational programs, and it kept Alaska "on par with all the other states in the union who have licensed psychologists."

[4:20:41 PM](#)

CHAIR KITO opened public testimony.

CHAIR KITO announced that HB 274 would be held over.

HB 275-EXTEND: BOARD OF MASSAGE THERAPISTS

[4:21:01 PM](#)

CHAIR KITO announced that the final order of business would be HOUSE BILL NO. 275, "An Act extending the termination date of the Board of Massage Therapists; and providing for an effective date."

[4:21:20 PM](#)

CRYSTAL KOENEMAN, Staff, Representative Sam Kito, Alaska State Legislature, paraphrased from the Sponsor Statement [Included in members' packets], which read:

House Bill 275 extends the termination date for the Board of Massage Therapists until June 30, 2022.

Per statute, this board is scheduled to sunset on June 30, 2018 with a one-year wind down if the legislature does not pass legislation extending it. The licensing function will remain after this date; however, the administrative functions of the board would transfer to the department.

Legislative Audit reviewed the board's operations and determined that it is in the best interest of the state to extend this board. The audit makes three recommendations and recommends a four-year extension with a new termination date of June 30, 2022. This is half of the full eight-year extension that Legislative Audit is authorized to provide.

The recommendations are as follows:

1. The Division of Corporations, Business, and Professional Licensing's (DCBPL) director, in consultation with the board, should take action to improve procedures to ensure licensure requirements are met.
2. DCBPL's director should address the Federal Bureau of Investigations audit findings and concerns.
3. The director of the Office of the Governor, Boards and Commissions should work to fill the public member position.

The board currently oversees over 1,400 active licensees and is made up of five members. State law requires four board positions be filled by licensed massage therapists actively engaged in the practice of massage therapy for a period of three years immediately preceding the appointment. The remaining position is to be filled by an individual from the general public. Statute prohibits the public member from being a licensed health care provider, an employee of the State, or a current or former member of another occupational licensing board.

The continuation of the Board of Massage Therapists is important to the health and safety of Alaskans.

4:23:15 PM

KRISTIN CURTIS, Legislative Auditor, Legislative Audit Division, Alaska State Legislature, directed attention to the sunset review audit, also dated October 2017, [Included in member's packets], and paraphrased from the report conclusions, which read:

In all areas except licensing, the audit found the board was operating in the public's interest. In general, meetings were conducted effectively, investigations were appropriately processed, and the board actively issued or changed regulations to improve the industry and better protect the public.

The audit concluded the board and DCBPL staff should improve its licensing procedures. Testing found that applicants were not consistently issued licenses in accordance with statutes, regulations, and/or procedures. Additionally, improvements are needed to comply with the federal standards over criminal history record information obtained as part of the licensing process.

In accordance with AS 08.03.010(c)(12), the board is scheduled to terminate on June 30, 2018. We recommend that the legislature extend the board's termination date to June 30, 2022.

MS. CURTIS directed attention to page 11 of the sunset review, which listed the schedule of licensing activity, and reported

that from FY16 through August 2017, the board had issued 1,186 licenses, which was double the expected number. She moved on to page 14, the Schedule of Revenues and Expenditures, noting that, as the board had a surplus of \$265,000 at the end of FY17, the license fees were lowered in FY18 to address the surplus. She pointed out that the license fees were listed on page 15.

MS. CURTIS reported that there were three recommendations, and she paraphrased from the first recommendation, "Division of Corporations, Business, and Professional Licensing's (DCBPL) director, in consultation with the Board of Massage Therapists (board), should take action to improve procedures to ensure licensure requirements are met," which read:

Three of 31 license applications tested as part of the audit were licensed without adequate supporting documentation and/or review. Deficiencies included:

A background check report for one initial applicant was not completed. The licensee operated without a background check report from licensure date of September 2015 through receipt of the background check report July 2017 during the license renewal process. Regulation6 requires applicants submit their fingerprints for a background check report in order to obtain a license to practice massage therapy. Per regulation, licenses can be issued to applicants even though a background check report has not been received. However, DCBPL staff must ensure the background check is completed timely. The applicant's fingerprint card was sent back multiple times due to incomplete information. DCBPL staff did not perform additional follow-up to obtain a completed fingerprint card because staff failed to list the applicant on the DCBPL spreadsheet used for tracking background reports.

One applicant answered "yes" to a professional fitness question, however no evidence could be located to demonstrate that the applicant provided an explanation. Furthermore, it is unclear whether the board considered an explanation prior to licensing.

One applicant answered "yes" to a professional fitness question and provided an explanation which included evidence of a permanent revocation of a national board certification for violating the respective code of

ethics and standards of practice. DCBPL staff and the board did not forward the application to the investigative section for review. A license was granted with the requirement that the individual take a two credit ethics course. The background check did not show any convictions, and according to the board chair, the board believed that a license could not be denied based on the revocation of a national certificate. However, DCBPL procedures called for the application to be forwarded to investigations for further review. It is unclear why DCBPL staff did not forward the application.

Alaska Statute 08.61.030(9) states that:

The board may issue a license to a person who has not been convicted of, or pled guilty or no contest to, a crime involving moral turpitude, or who has been convicted of, or pled guilty or no contest to, a crime involving moral turpitude if the board finds that the conviction does not affect the person's ability to practice competently and safely.

The lack of a thorough and timely evaluation of the above applicants' professional fitness increased the risk to public safety.

We recommend DCBPL's director, in consultation with the board, take action to improve procedures to ensure licensure requirements are met.

MS. CURTIS paraphrased from the second recommendation, "DCBPL's director should address the Federal Bureau of Investigations (FBI) audit findings and concerns," which read:

DCBPL did not comply with federal standards over criminal history record information. The FBI audit conducted in April 2017 found DCBPL did not have secure channels of communication. Additionally, applicants were not notified in writing that their fingerprints were to be used for an FBI background check and were not advised of the procedures for obtaining, changing, correcting, or updating an FBI identification record. Additionally, the federal audit found inadequate chain of custody for fingerprint cards. A chain of custody ensures the integrity of the applicant/fingerprint process.

DCBPL addressed one of the findings by including verbiage in the application that submitted fingerprints will be sent to the FBI for a federal background check. However, as of October 2017, the other issues remain outstanding.

According to 28 CFR 20.21(f)(1), (2), and (3), whichever State agency collects, stores, and disseminates criminal history record information must prevent unauthorized access to information; ensure that the information is restricted to authorized users; and that the information cannot be modified, destroyed, accessed, changed, purged, or overlaid by other entities. Additionally, per 28 CFR 50.12(b), applicants must be advised of procedures for obtaining a change, correction, or updating FBI identification records.

Per DCBPL management, staff was unaware the communications and fingerprint cards did not meet federal standards. Ensuring data is secure protects individual privacy and promotes public safety.

We recommend DCBPL's director address the FBI audit findings and concerns.

Auditor's Note: Details regarding the unsecure channels of communication are being withheld from this report to prevent the weakness from being exploited. Pertinent details have been communicated to agency management in a separate confidential document.

MS. CURTIS paraphrased from recommendation 3, "The director of the Office of the Governor, Boards and Commissions should work to fill the public member position," which read:

The public member position on the board became vacant March 2017 and remained vacant as of October 2017.

Per AS 08.61.010, the board is statutorily required to consist of five members appointed by the governor, one of which is a public member who is not a licensed health care provider, employee of the State, or a current or former member of another occupation licensing board. According to Boards and Commissions staff, stringent requirements make it difficult to

find interested applicants. The Office of the Governor, Boards and Commissions section is responsible for actively recruiting, interviewing, and vetting board applicants.

The lack of a public board member prevents the board from conducting business with appropriate public input and perspective.

We recommend the director of the Office of the Governor, Boards and Commissions work to fill the public member position.

MS. CURTIS added that the public member to the board may not be a licensed health care provider, an employee of the state, and may not be a current or former member of another occupational licensing board. She pointed out that these restrictive requirements could make it difficult to find interested applicants.

4:28:59 PM

MS. CURTIS directed attention to the response from the Office of the Governor on page 29, which agreed to work to help fill the public member position, with a recommendation for the board to pursue a legislative fix to those restrictive requirements. She noted that the Department of Commerce, Community & Economic Development response was on page 31, and that the department agreed that additional checks were necessary to ensure the administrative record was complete. The department added that additional supervisory resources were necessary to help meet the standards. She addressed the response from the Board of Massage Therapists on page 33, recounting an agreement with the conclusions and recommendations.

REPRESENTATIVE JOSEPHSON questioned where the documentation and applications were housed as the board did not have an office.

MS. CURTIS explained that, for this audit, the applicant was going to a certified person for fingerprinting, and then the fingerprint card was given back to the applicant for mailing. She declared that this problematic, as it allowed for tampering. She added that she was not aware of the final destination for these cards. She said that Representative Josephson would need to direct his question to the department.

REPRESENTATIVE WOOL asked for verification that prior to the formation of the Board, a massage therapist was not able to bill an insurance company, but that the Board now enabled that billing.

MS. CURTIS offered her understanding that previously the massage therapists had to work through another health care professional to bill insurance.

REPRESENTATIVE WOOL asked why there was a recurring requirement for the submission of fingerprints.

MS. CURTIS reported that this requirement was helpful for combatting human trafficking and the problems from the sex trade industry and she offered her belief that this was not unusual.

REPRESENTATIVE WOOL mused that anyone operating illegally would not register or submit their fingerprints and pointed out that there was not a requirement for fingerprints when purchasing a gun.

REPRESENTATIVE KNOPP asked if massage establishments were licensed and if it was necessary to be a licensed massage therapist to own a massage establishment.

MS. CURTIS replied that there was interest in the law enforcement community for licensing massage establishments to help combat human trafficking, although, she opined, it was not a current requirement. She pointed out that this would require a statutory change.

[4:35:54 PM](#)

SARA CHAMBERS, Deputy Director, Juneau Office, Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community & Economic Development, in response to the question regarding licensing of massage establishments, said that these establishments were not licensed, although it was of keen interest to law enforcement. She offered her belief that a bill was to be introduced to address this.

CHAIR KITO noted that she was referencing proposed HB 110.

MS. CHAMBERS reported that all the documents were kept in the Department of Commerce, Community & Economic Development offices, and on a secure data base. She said that any necessary files were transferred electronically to the board. She noted

that, as a review by the FBI suggested that the system was not secure, a new system had been put in place which met all the standards. She acknowledged that a primary reason for the board had been to allow for billing to insurance when working independently. She stated that this was the only licensing program which required fingerprinting upon every renewal, a higher standard than any of the other licensing boards.

REPRESENTATIVE WOOL questioned having the burden on the board members for illicit activity associated with the profession.

MS. CHAMBERS relayed that this was the determination by the legislature when authorizing the board.

[4:40:27 PM](#)

DAVID EDWARDS-SMITH, Chair, Board of Massage Therapists, said that a lot had been accomplished with the partnership of the division since the first board meeting in January 2015. He noted that this was the first sunset audit, that it was very positive, and the board was in support of it. He added that the board was moving from its "start-up version of the board" toward board operations. He posed whether it was necessary or important to have a board and then stated that the real question was: "How can we not have a Board of Massage Therapists?" He pointed to the diversity of techniques in the profession and stated that it took a board of professionals with experience in the field to "be able to navigate this diversity because we need to be able to put those techniques into context of the standards and practice and code of ethics that massage therapists are held to." He said that these standards assured the public that there was a process in place. He stated the board also put into context these standards in a variety of settings, including spa settings, chiropractic clinics, physical therapy clinics, and airports. He reported that a look at the science of radiology, cardiology, and others revealed a lot of funding for the practice of these sciences, whereas, massage therapy was still an emerging science with different education and career opportunities as the profession changed. He reported that the board had reviewed 1,400 licenses, and that about 30 percent of those licenses had yes answers to professional fitness questions. He pointed out that, during the tenure of the board, there had been four different licensing examiners.

[4:44:58 PM](#)

VOLKER HRUBY, President, American Massage Therapy Association (AMTA) - Alaska Chapter, said that he had been a massage therapist for 13 years, working in the spa industry, medical massage, and private practice. He noted that the recent audit pointed out that having a regulatory board allowed massage therapists to establish themselves as health care professionals, bill health insurance, create a legal way for the public to file a complaint, give voice to the public over the practice of massage therapy, and hold massage therapists accountable through licensure. He offered his belief that the board should be extended for these same reasons. He pointed out that Department of Commerce, Community & Economic Development (DCCED) provided administrative support for the board. He offered his understanding that failure to pass HB 275 would necessitate the duties of the board revert to the Division of Corporations, Business, and Professional Licensing in DCCED. He opined that the division did not possess the capacity or specific expertise that the the massage therapists serving on the board brought for oversight in the industry. He offered his belief that the board had done "an excellent job of enacting regulations to implement statutes in a short time period." He reported that the board had issued 1,186 new licenses, almost double the number projected. He lauded the board members, pointing out that each of them was committed to improvement for any shortcomings outlined in the [sunset] audit. He stated support for the proposed bill and declared his firm belief that to fulfill the mission of the board to provide public safety for massage consumers and to regulate the profession by setting and maintaining industry standards, the Board of Massage Therapists must be extended.

CHAIR KITO stated that HB 180 would be postponed.

[4:48:27 PM](#)

CHAIR KITO opened public testimony on HB 275.

[4:48:52 PM](#)

KIM VERREYDT shared her experience as a health care provider for almost 30 years, as a massage therapist and a flight paramedic. She declared her support of HB 275. She stated her belief that all health care professionals should be regulated.

[4:49:58 PM](#)

JANE GNASS stated that she had been licensed massage therapist for 20 years and that she was both state and nationally board certified. She declared her support for the extension of the termination date of the Board of Massage Therapists. She emphasized that the Board ensured "consistent and professional standards," and that it helped to "elevate our profession."

[4:51:13 PM](#)

JILL MOTZ reported that she currently held positions on both the state Board of Massage Therapists and the Alaska American Massage Therapy Association boards and that she had been practicing massage therapy since 2003. She shared her background working as a massage therapist. She declared her support for HB 275, stating that it was "excellent for small businesses, communities, therapists, and most importantly, consumers."

REPRESENTATIVE WOOL asked if the fingerprint requirement was burdensome.

MS. MOTZ replied that this requirement was often discussed at board meetings and that there had been attempts to change this requirement to once every three cycles.

[4:53:59 PM](#)

Yael HICKOK stated that she had been a massage therapist since 1999. She declared that she was against HB 275. Although she supported the licensing for massage therapists, she opposed extending the board. She added that the licensing was helpful, especially for the ability to bill insurance and allow massage therapists to be independent. She noted that, although the licensing was supposed to reduce crime and sex trafficking, that had not been proven to happen. She declared that the licensing fees were ridiculous, and she listed the various fees. She stated that it did not make sense to have to repeatedly be fingerprinted. She expressed her support for the licensing, even as there was not a need for the board. She shared the results of a Facebook survey of massage therapists, in which 44 percent of the 121 respondents said they wanted to eliminate the board and continue licensing, while 24 percent said they wanted to continue licensing as it was, 14 percent said they wanted to eliminate licensing, and 18 percent said they did not know. She added that she had not shared her own opinion during the survey. She declared that the survey and responses on Facebook indicated that many of the massage therapists were unhappy with the board,

with many complaints for the amount of time necessary to receive a license. She shared that communication with the board had been problematic, reporting that she had never been notified for the scheduling of a meeting. She emphasized that the board had a responsibility to represent the licensees. She offered that it was a possibility to have a board at some future date if the massage therapists were more involved in the creation of the board, noting that the idea for licensing without a board had not been discussed. She reported that her fees cost her more than a month's wages, which she deemed to be inexcusable.

5:00:45 PM

CHAIR KITO announced that HB 275 would be held over.

5:01:05 PM

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:01 p.m.